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House Bill _____
By _____

Senate No. SB1410
By Gilbert

AN ACT to amend Tennessee Code Annotated, Title 68, to enact the "Tennessee Drycleaner's Environmental Response Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Drycleaner's Environmental Response Act".

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Abandoned drycleaning site" means a location formerly operated as a drycleaning facility;

(2) "Board" means the drycleaner environmental response board created under Section 4 of this act;

(3) "Drycleaning facility" means any facility located in this state which is or has been engaged in on-site drycleaning operations, other than: (A) a coin-operated drycleaning operation, (B) a facility located on a United States military base, (C) a uniform service and/or linen supply facility, or (D) a prison or other penal institution;

(4) "Drycleaning operations" means commercial cleaning of apparel and household fabrics for the general public, using one or more drycleaning solvents;

(5) "Drycleaning solvent" means any chlorine or hydrocarbon-based formulation or product that is used as a primary cleaning agent in drycleaning operations;

(6) "Drycleaner environmental response fund" refers to the fund established under Section 3 of this act; and

(7) "Wholesaler distributor" means a full-line service distributor which supplies drycleaning facilities solvents and all other drycleaning supplies for operation on or after the date this act becomes law.

SECTION 3. (a) There is established the drycleaner environmental response fund to provide a source of funds for the implementation of this act.

(b) The expenses of administering the fund shall be paid from the money in the fund, including staff to implement the provisions of this act.

(c) The treasurer shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds are invested. Interest that accrues from these investments shall be deposited in the fund.

(d) The sources of money for the fund are as follows:

(1) Registration and drycleaning solvent fees paid under Section 4 of this act;

(2) Any appropriations made by the general assembly;

(3) Penalties collected pursuant to this act; and

(4) Gifts, grants, and donations intended for deposit in the fund.

(e) Money in the fund at the end of a state fiscal year shall not revert at any time to the state general fund.

SECTION 4. (a) There is created the drycleaner environmental response program in the department of environment and conservation. The drycleaner environmental response board is

hereby created. Such board shall be administratively attached to the department of environment and conservation.

(b) The board shall be composed of the commissioner of environment and conservation, or his designee; the commissioner of revenue, or his designee and one (1) representative of each of the following, appointed by the governor:

(1) Drycleaning operations whose annual gross receipts are less than two hundred fifty thousand dollars (\$250,000);

(2) Drycleaning operations whose annual gross receipts are more than two hundred fifty thousand dollars (\$250,000);

(3) Wholesale distributors of drycleaning solvents;

(4) Environmental interests; and

(5) Environmental engineering or scientific community.

The initial appointments by the governor shall be staggered as follows:

(1) One (1) member shall be appointed for a term of one (1) year;

(2) One (1) member shall be appointed for a term of two (2) years;

(3) One (1) member shall be appointed for a term of three (3) years;

(4) One (1) member shall be appointed for a term of four (4) years; and

(5) One (1) member shall be appointed for a term of five (5) years.

Thereafter, all members shall serve three (3) year terms.

(c) Each member of the board who is not a state employee is entitled to receive travel expenses in accordance with the state comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general.

(d) If an appointed member of the board is not able to serve the member's full term, the governor shall appoint an individual to serve for the remainder of the unexpired term.

(e) The board shall, at its first meeting of each year, elect from among its members a chairperson and other officers necessary to transact business.

(f) The board must have a quorum to transact business. Four (4) members constitute a quorum. The board shall meet upon the request of the chairperson or the written request of three (3) of the board members. A meeting must be held within fourteen (14) days after a request is made.

(g) The board shall promulgate any rules and regulations necessary to implement this act in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

(h) The board shall have the following duties and responsibilities:

(1) Develop and recommend appropriate strategies and establish a schedule of acceptable fees and costs, for services rendered in the environmental responses at drycleaning facilities;

(2) Oversee expenditures required to provide administrative support and shall have a fiduciary duty to maximize the funds available for cleanup and minimize the funds which are necessary to support the administrative function of the board;

(3) Review and prioritize petitions described in this act according to guidelines established by the board. In establishing guidelines under this subsection, the board shall consider the degree of risk to human health and the environment, the status of any pending or threatened legal action against the drycleaning facility, and other factors as the board may deem appropriate.

(4) The board shall develop a process for the owner/operator to submit a petition to the board; such process to place a minimum cost burden on the owner/operator. The petition process shall outline the specific requirements and guidelines to follow when participating in this program.

(5) Authorize payments from the fund established by this act for the response. Sites which are priority sites as determined by the board will be

reviewed by the board and they will authorize the funds necessary for the cleanup of such sites.

(6) Once a drycleaning facility has applied to the board and has followed all the requirements including the payment of necessary fees and surcharges on solvents, then the board shall issue a letter which states that the drycleaning facility has been accepted by the board for coverage provided by this act.

SECTION 5. (a) Each year, the owner/operator of a drycleaning facility and/or wholesale distributor that is currently conducting, or intends to conduct for all or part of the year, drycleaning operations shall register with the department of revenue on forms provided by the department of revenue. An owner/operator of an abandoned site may register with the department of revenue as described in this section in any year, provided that the owner/operator pays the difference between any annual registration fees that have been paid and any annual registration fees that would have been imposed under this act if the drycleaning facility had registered at the first possible date established by this act and continuously operated as a drycleaning facility. These fees shall be known as make-up fees for each drycleaning facility.

(b) Each drycleaning facility which files a petition accepted by the board will be required to pay up to the first ten thousand (\$10,000) dollars of expenditures made by the board for assessment and/or remediation activities at the drycleaning facility.

(c) The board may not approve response costs under this act for a drycleaning facility that has exhibited wanton and willful disregard of this act or rules promulgated pursuant to this act.

(d) The board shall not authorize payment of fees that would result in a diminution of the fund below a balance of one hundred thousand dollars (\$100,000) unless an emergency exists at a drycleaning facility that constitutes an imminent and substantial threat to human health or the environment. In the event of an emergency described under this subsection, the board shall approve reasonable response costs to

remove the imminent and substantial threat to human health or the environment.

SECTION 6. (a) The owner/operator of a drycleaning facility registered under Section 5 of this act who operates using a perchloroethylene solvent shall pay to the department of revenue an annual registration fee as follows:

(1) Each drycleaning facility with annual gross revenues of:

| <u>Revenue</u> | <u>Fees</u> |
|-----------------------|-------------|
| \$0-\$250,000 | -\$2,500.00 |
| \$250,000-750,000 | -\$3,500.00 |
| \$750,000-\$1 million | -\$4,500.00 |
| Over \$1 million | -\$5,500.00 |

(2) Drycleaning facilities registered under Section 5 of this act who utilize hydrocarbon-based solvents shall pay a registration fee equal to sixty percent (60%) of the fee imposed by subdivision (1) per each category.

(b) In the event that perchloroethylene is discovered in a response action under this act and that owner/operator has registered as a hydrocarbon-based drycleaning facility, then that owner/operator shall be responsible for the payment retroactively of the balance of the fees which would have been paid had they registered as a perchloroethylene drycleaning facility.

(c) In addition to the fee required by subsection (a), a drycleaning solvent surcharge of:

(1) five dollars (\$5.00) for each gallon of perchloroethylene; and

(2) one dollar (\$1.00) for each gallon of hydrocarbon-based drycleaning solvent sold for use in Tennessee by a drycleaning facility shall be collected by the seller of the solvent.

(d) A wholesale distributor shall pay to the department of revenue an annual fee of five thousand five hundred dollars (\$5,500.00).

(e) At least thirty (30) days before payment of a registration fee is due the department of revenue shall attempt to notify and submit a registration fee payment form to each owner/operator of a drycleaning facility registered under Section 5. The registration fee payment form provided by the department of revenue must accompany the fee payment.

(f) The department of revenue shall provide each person who pays a registration fee under this act with a receipt. The receipt or the copy of the receipt shall be produced for inspection at the request of any authorized representative of the department.

(g) Fees and surcharges paid under this section shall be collected by the department of revenue and deposited in the drycleaner environmental response fund created under this act. If money in the fund exceeds ten million dollars (\$10,000,000) during any one (1) year, the board is directed to notify the department of revenue. Upon notification by the board under this subsection, the department of revenue shall adjust the annual registration fee described to one thousand dollars (\$1,000) only for the following year. The department of revenue shall attempt to notify and submit an adjusted registration fee payment form to each owner/operator of a drycleaning facility registered under this act.

(h) An owner/operator of a drycleaning facility required to pay fees under this section and who fails to pay the fee when due shall be assessed a penalty of fifty dollars (\$50.00) per drycleaning facility for each day that passes after the fee becomes due and before the fee is paid. Penalties under this section shall be deposited in the fund.

SECTION 7. (a) Within one hundred eighty (180) days of the date this act takes effect, the department of environment and conservation shall propose and promulgate, after public notice and an opportunity for comment, standards for evaluating releases of drycleaning solvent at or from affected drycleaning facilities and for determining what, if any, response action is necessary for any such release and standardized methods and techniques for responding to such releases. Such standards, methods and techniques shall, to the maximum extent

practicable, be applicable to all drycleaning facilities in the state and in any event shall be cost-effective, reasonable, and technically feasible;

(b) A drycleaning facility who has (1) paid all the registration fees and solvent surcharges required under this act, (2) complied with all rules and regulations required in this chapter and (3) whose application has been accepted by the board for participation in the fund for cleanup shall have the following protection:

(1) shall not be subject to any administrative or judicial action brought by or on behalf of the state or any department, agency or subdivision thereof, or;

(2) shall not be held liable for claims for contribution, enforcement actions, or third-party claims arising under this title, or rules adopted under this title, including actions pending by state or local governments filed prior to the effective date of this act, concerning matters addressed in the petition during the time the person has a petition under consideration or an application being prepared by the board.

SECTION 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 9. Tennessee Code Annotated, Section 4-29-218, is amended by adding a new item thereto, as follows:

() "Drycleaner environmental response board";

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it.

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